Development (1938) Department

MS SERIES.

G.O. No. 1855

DATED 30.7.38.

[Despatch Abstract.]

L. C-9 - South Kanara - forest.
Concessions ancient right - papers Rearded

OF THE MADRAS LEGISLATURE.
(Council Section)
15--2--1938.

STARRED QUESTION:

Mr. J.A. Saldanha

DEVELOPMENT DEPARTMENT.

* 125. With reference to the answer given on 31-8-1937 to my question No.16, will the Hon. the Minister for Agriculture and Rural ~~Uplift~~ Dev. be pleased to state:

(a) if Government have enquired into the question as to whether the removal of green leaves and twigs of trees and shrubs from reserved forests in South Kanara was an ancient right or privilege of the cultivators in the neighbourhood of such forests;

(b) if so, what the decision of the Government is;

(c) with reference to the debates in the Madras Legislative Council on 19-3-1924 (L.C.P. Vol. XVII, page 730 et seq) and the speech by Mr. Tireman, the then Chief Conservator of Forests, during the debate, what the decision of Government was as to the linking of the Panchayat system with the privilege in question and on what condition the privilege of taking green leaves, etc. was granted then;

(d) whether that condition has been broken;

(e)

Starred Question No.125 (Contd.).

(e) for what kind of produce were the forests of Hosabettee and Todar and other neighbouring forests were originally reserved, for fuel timber, or valuable industrial trees like sandal-wood;

(f) for what purposes are they ~~been~~ reserved and maintained at present; 8ter.

(g) whether this reservation has resulted in stricter conditions being enforced against privileges of cultivators in their neighbourhood, and in inflicting sufferings by the increase of ravages of wild ~~xxxxxx~~ beasts against crops and cattle; and

(h) whether by the policy adopted agriculture and horticulture have suffered in the interests of sylviculture

A.D.
16/2.

Dept.

Dept

Qtn. No. 728 I/38 dt 1.3.38

34
1/3

:5:

A copy of Question No. 125 which Mr. J.A. Saldanha proposes to ask in the Legislative Council is forwarded to the C.C.J.

He is requested to furnish information on the points raised in ~~suitable answers to clauses~~ clauses (e) to (f) of the Question.

23.2.38

26/2

1.3.38

To the C.C.J.

(with copy of question in the Cf.)

4

Dear

Opn. No. 728 I/38-2 dt 18.3.38

The c.c. is requested to expedite his reply to ~~this Deptt~~ opn No. 728 I/38-1 dt 1-3-38 regarding rights and privileges of cultivators in the neighbourhood of South Kanara forests ~~and to say when it may be expected.~~

RC
18338

Lis
18.3.38

Sec
18-3-38

To the c.c.-7.

DMP/GRR 21/3

Legislative Council Question No.125 * (Starred).

Mr. J.A.Saldanha.

Development Department.

Draft Answer.

With reference to the answer given on 31-8-1937 to my question No.16, will the Hon'ble the Minister for Agriculture and Rural Development be pleased to state:

(a) if Government have enquired into the question as to whether the removal of green leaves and twigs of trees and shrubs from reserved forests in South Kanara was an ancient right or privilege of the cultivators in the neighbourhood of such forests;

(b) if so, what the decision of the Government is;

(c) with reference to the debates in the Madras Legislative Council on 19-3-1924 (L.C.P.Vol.XVII, p.730 et seq) and the speech by Mr. Tireman, the then Chief Conservator of Forests, during the debate, what the decision of Government was as to the linking of the Panchayat system with the privilege in question and on what condition the privilege of taking green leaves, etc. was granted then;

(d) whether that condition has been broken;

(a) and (b). Yes. It is not an ancient right or privilege.

(c) and (d). The question is not understood. If it refers to the privileges of removing green manure leaves, dry leaves and dead wood, these concessions were granted from 1922 subject to the condition that the concessions would be withdrawn if abused or if the ~~ryots set fire to the forests.~~ forests in which they were granted were burnt. ~~In~~ spite of the repeated warnings these concessions were greatly abused and consequently they were ordered to be withdrawn after due notice. ~~Again~~ However in response to several representations made, the Govt. have again ordered that the concession to remove dry leaf and dry wood should be restored subject to certain conditions. The above concessions have nothing to do with Panchayats

In 1922-23 some Forest village system panchayats were constituted under which 50% of the grazing revenue were refunded to the Panchayat provided

(e) for what kind of produce for fuel timber, or valuable industrial trees like sandalwood, were the forests of Hosabettee and Todar and other neighbouring forests were originally reserved;

(f) for what purposes are they reserved and maintained at present.

the forests were protected against fire and theft. Owing to abuse of the concession, wholesale illicit fellings and the disinclination on the part of the panchayatdars to renew the annual greements, most of the village anchayats have ceased to function. There was only one panchayat working during 1936-37.

(e) and (f). The Government are awaiting ~~certain~~ information called for from the C.C.F.

23.3.38

23.3.38

23.3.38

despatching at 1.15 P.M.
24/3.

*7 (91)

Legislative Council Question No.125* (Starred).

Mr. J.A. Saldanha.

With reference to the answer given on 31-8-1937 to my question No.16, will the Hon'ble the Minister for Agriculture and Rural Development be pleased to state:

(a) if Government have enquired into the question as to whether the removal of green leaves and twigs of trees and shrubs from reserved forests in South Kanara was an ancient right or privilege of the cultivators in the neighbourhood of such forests;

(b) if so, what the decision of the Government is;

(c) with reference to the debates in the Madras Legislative Council on 19th March 1924 (L.C.P.Vol.XVII, page 730 et seq) and the speech by Mr. Tireman, the then Chief Conservator of Forests, during the debate, what the decision of Government was as to the linking of the Panchayat system with the privilege in question and on what condition the privilege of taking green leaves, etc., was granted then;

(d) whether that condition has been broken;

(e) for what kind of produce for fuel timber, or valuable industrial trees like sandalwood, were the forests of Hospettee and Todar and other neighbouring forests were originally reserved;

(f) for what purposes are they reserved and maintained at present.

Development Department.

(a) & (b). Yes. It is not an ancient right or privilege.

(c) & (d). The question is not understood. If it refers to the privileges of removing green manure leaves, dry leaves and dead wood, these concessions were granted from 1922 subject to the condition that the concessions would be withdrawn if abused or if the forests in which they were granted were burnt. In spite of the repeated warnings these concessions were greatly abused and consequently they were ordered to be withdrawn after due notice. However in response to several representations made, the Government have again ordered that the concession to remove dry leaf and dry wood should be restored subject to certain conditions. The above concessions have nothing to do with Panchayats.

In 1922-23 some Forest Village System Panchayats were constituted under which 50% of the grazing revenue were refunded to the Panchayat provided the forests were protected against fire and theft. Owing to abuse of the concession, wholesale illicit fellings and the disinclination on the part of the panchayatdars to renew the annual agreements, most of the village panchayats have ceased to function. There was only one panchayat working during 1936-37.

(e) & (f). The Government are awaiting information called for from the Chief Conservator of Forests.

Fort St. George,
24th March 1938.

C.J.Paul,
Secretary to Government.

(The above answer has been approved by the Hon. Minister for Agriculture & Rural Development).

Forwarded
(By Order) C. Venkataramani
Superintendent.

To the Secretary,
Madras Legislature.

14

ASSISTANT SECRETARY TO GOVERNMENT
27 MAR 1938
DEVELOPMENT DEPARTMENT

Pos. copy -- Telephone message dated 26-3-1938.

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From the Chief Conservator of Forests, Chepauk, Madras.

To the Secretary to Government, Development Department, Madras.

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Refce:-Development Department Memo.No.728-I/38-1 dated 1-3-38 and reminder dated 18-3-38
re. rights and privileges of cultivators in the neighbourhood of South Kanara Forests, and Legislative Council Question No.125.

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The information has been called for from the Conservator. On a reminder from me he has replied that he is awaiting a report from the District Forest Officer whom he has reminded by telegram.

Desk.
Submitted for perusal.
The C.C's report may be awaited.

for Chief Conservator.

~~DKS/26.3.~~

26 MAR 1938

9

O.F. 30.

Forest DEPARTMENT.

ASSISTANT SECRETARY TO GOVERNMENT 21 MAY 1938

Received ..... 192 . *Registered* D. 2127-I 192

23-5-38

Subject.

Forest concessions - Forest Village system - Panchayats - South Kanara - Legislative Assembly Question - Information furnished.

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ENCLOSURES.

No. Copy of D.F.O's report.

Spare copies .....

Refce No. 2075/38-C2

Station Chepauk, Madras , *Dated the* 15th May 1938

From (Name) C.C.Wilson Esq., I.F.S.,

(Designation) Chief Conservator of Forests.

To The Secretary to the Government of Madras,

DEVELOPMENT Department.

Sir,

p 3 ante

Refce:-Government Memo.No.728 I/38-1 dated 1-3-1938.

--

pp. 12-17 infra

I enclose a copy of the District Forest Officer's report which furnishes full information on the points raised in the Legislative Assembly Question. The questions are briefly dealt with below:-

p. 1 ante

2. (c). The forest concessions were allowed in all reserves and they consisted of clearance of undergrowth free removal of deadwood and green leaves of unclassified

species and dry leaves of all species, subject to the condition that the concessions should not be abused and that the reserves should be protected from fire.

The Forest Village System panchayats were allowed all the above concessions, and in addition, the concession of grazing and refund of half the grazing fees, on condition that the forests should be protected from illicit fellings and from fire. In 1927 a further condition was added (viz.) that the boundary lines should be cleared and maintained by the panchayats. This became necessary as the protection was entrusted to the panchayats and the protective staff by whom the work was done was withdrawn. Subsequently as the concession of refund of half the grazing fees failed to secure satisfactory protection, but caused discontent when refused it was withdrawn.

There were 9 panchayats in 1922-23, 5 in 1923-34, 7 in 1924-25, 8 in 1925-27, 3 in 1927-28 to 1932-33 and only one from 1933-34 to 1937-38. Thus in spite of the earnest efforts of the District Forest Officers the number of panchayats dwindled from nine to one mainly due to the introduction of the condition requiring them to clear and maintain the boundary lines and the withdrawal of the concession of refund of half the grazing fee. In order to encourage the formation of panchayats Government in their Order No.359 Ms.Development dated 10-3-32 directed the restoration of the concession of refund of half the grazing fee subject to satisfactory protection of the reserves entrusted to them and also the rebate of the cost of clearance and maintenance of the boundary marks, from the amounts payable by them. But even this failed to evoke any response. The reason for the failure was that the ryots had not much to gain by taking over the reserves under the Forest Village system saddled with conditions when their daily needs except grazing were catered for by the general concessions. Grazing was the only additional

concession they could have under the Forest Village system and as the refund of half the grazing fees was saddled with conditions they preferred to graze their cattle on permits.

(d) The concessions were abused and the conditions were broken and it was for this reason that they had to be withdrawn after due warning.

(e) The Todar and Hosabettu Reserved Forests were reserved in 1890 and 1888 respectively. They were not classified at the time of reservation. According to the Retrenchment Committee's classification the two reserves are classed as "Provincial - Remunerative."

(f) They are now maintained as sandalwood reserves, and a scheme for planting suitable areas with cashew which yields a prolific supply of dry leaf manure, as well as a valuable crop of nuts has recently been formulated.

for Chief Conservator.

DKS/19.v.

20 MAY 1958

Enclosure.

Copy of letter Ref. on C.No.851/F.38-C1, dated 25-3-1938 from the District Forest Officer, Mangalore North, to the Conservator of Forests, Ootacamund Circle., through the Collector of South Kanara.

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Subject:-Legislative Council Question - Information regarding reservation of Hosabettu, Todar and other neighbouring forest.

Refce:- Your Ref.No.M.895, dated 18th March 1938.

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Question (c). The Chief Conservator of Forests in his order Ref.No.1206/21-2, dated 13-9-1922 directed the introduction of the Forest Panchayats under the Forest Village System in this District of South Kanara and allowed as an experiment till the end of June 1923 the concessions noted below:-

(1) Clearing of undergrowth to a distance of half a mile from the limits of private holdings except in the Forests near the coast where the limit was fixed as 200 yards.

(2) Clearing of undergrowth in all areas sown with Hopea.

(3) Free removal in all reserves of:-

(a) manure leaves of unclassified species,

(b) dead timber of unclassified species

(c) dead fuel

(d) Clay.

These were granted on the conditions noted below:-

(1) that if in any forest they are in any way abused they will be cancelled in such forest.

(2) that the forests in which they are granted must not be burnt; if accidental fires occur, they must be extinguished by the ryots without delay.

As a further inducement to the people to prevent fires, it was also ordered that half the grazing fees should be refunded in June 1923 if the forests for which grazing permits were issued were not burnt, or if in cases of accidental fires the fires are extinguished by the local ryots without delay.

2. As a result of this order, 9 Forest Panchayats under the Forest Village System were formed during the year 1922-23 in the several ranges for the reserves noted in the margin* and the agreements executed in the form approved by the Chief Conservator of Forests, in his Proceedings Mis.No.60 dated 6-2-1923, communicated with Conservator's Ref.No.M.292/21, dated 13-2-23. The working of the panchayats was reported in this office D.Dis. No.48/23, dated 23-6-1923, wherein it was recommended that the experiment might be continued. This recommendation was approved in C.C.P.Mis.No.415, dated 2-8-23.

* Mangalore Range.
1. Todar and Hosabettu
2. Panamberi
3. Mujimale.

Udipi Range.
1. Mavinakodlu and Matkalgudde
2. Jarvathu and Jattukattumale.

Shankernaraina Range.
1. Tenkahola

Coondapur Range.
1. Kursegudde.
2. Sarpanamane & Savant-agudda & Kadike.
3. Baindur and Karnigadde.

3. In 1923-24, indiscriminate fellings of trees were reported in the Mujimale and Panamberi Reserves and it was found on enquiry that the fellings were made by the adjoining ryots with the connivance of the Panchayatdars. The matter was reported to the Conservator, who, in his order L.Dis.No.2234/23 dated 20-10-1923, directed that the two panchayats should be dissolved. As regards the reserves of Coondapur Range in charge of three panchayats, the panchayat committees did not come forward to renew their agreements. The ryots of the villages adjoining these reserves kept on agitating for more concessions the chief among which was the removal of dry leaf. The concession of removal of dry leaf was subsequently granted by the Chief Conservator of Forests. Even then the agreements were not executed by the three panchayats. They were, therefore, not in existence in 1923-24. At the close of the year, another panchayat was formed for the Durgamale Reserve. So in 1923-24, there were 5 panchayats.

4. Though the intention of the Chief Conservator that the concessions granted in 1922 were to be allowed in all the reserves,

it was thought by the District Forest Officer and the Conservator that the concessions were to be granted only in cases where the Forest Village System could be introduced. In order to prevent any misunderstanding, the Chief Conservator of Forests, in his order Ref.No.2195/24-2, dated 23-7-1924 directed the grant of the following concessions as an experimental measure for one year from 1-8-1924 in all the Reserved Forests in South Kanara. These were continued from time to time:-

(a) Clearing of undergrowth in all reserves (except those near the coast) to a distance of ½ half a mile from the limits of private holdings.

(b) In the reserves near the coast, clearing of undergrowth to a distance of 200 yards from the limits of private holdings.

(c) Clearing of undergrowth in all areas sown with Hopea.

(d) Free removal of -

(i) green manure leaves of unclassified species and dry leaves of all species.

(ii) Dead fuel.

(e) Refund of half the grazing fees in reserves where the "Forest Village System" has been introduced.

(1) if the reserves have not been burnt during the year, or if in cases of accidental fire the fire has been extinguished without delay, and

(2) if illicit fellings have not taken place.

Subsequently the following conditions were ordered to be added

(1) The concessions are to be limited for the use of produce in the village limits from which the produce is taken.

(2) The word "undergrowth" noted above is defined to mean "growth of unclassified species not above 6" in height" and the words "dead fuel" to mean "parts of dead trees less than 3" in diameter". These concessions are still in force except in the reserves closed to the concessions on account of abuse of the same.

5. During 1924-25, there were 7 panchayats working. Shirur and Baindur Panchayat Committees who did not execute the agreements in 1923-24, came forward and executed the agreements. During the year, the management of the panchayat of Todar abd Hosabettu was not satisfactory. In these two reserves numerous fellings of trees of all species took place owing to mismanagement of the Panchayat Committee who were not willing to take up the responsibility of protecting the forests. The matter was reported to the Conservator who ordered that separate panchayats should be formed for the two reserves and their work watched during 1925-26.

6. In 1925-26 and 1926-27, there were 8 panchayats working as separate panchayats were formed for Todar and Hosabettu reserves.

In 1927-28 there were only three panchayats, viz., Tenkahola, Todar and Hosabettu, working as they agreed to the insertion of a new condition in their agreements to the effect that the Panchayats shall clear and fire trace the exterior lines of the reserves as required by C.C.P.Routine No.313, dated 20-9-27. Out of the remaining 5 panchayats, four did not consent to the insertion of the new condition and the remaining Panchayat (Durgamale) was not satisfied with the refund of Rs.50/- sanctioned by the Chief Conservator out of the grazing fee of Rs.149-10-0 collected in 1926-27.

7. The three panchayats (Tenkshola, Todar and Hosabettu) continued to work till 1932-33. From 1933-34, only the Panchayat of Tenkshola is functioning as the panchayats of Todar and Hosabettu refused to work on account of the withdrawal of the general concessions.

8. In 1930, the Chief Conservator of Forests, recommended to Government to put an end to the forest concessions and to form new panchayats on certain conditions stipulated in his Ref.No.1035-

1035-C2-30-1 dated 30-1-30 (copy enclosed) to provide means to the ryots to obtain leaf manure. Enquiry was held in the matter. The villagers were not willing to form panchayats under the conditions set forth for one reason or the other, as reported in this office report Ref.No.385/F.30-C1, dated 9-5-1930, submitted in reply to Conservator's Ref.No.M.266/30, dated 5-2-30. The papers were ultimately recorded by the Chief Conservator of Forests in his Proceedings Routine No.590/30, dated 11-8-1930.

9. From the above it will be seen that though attempts were made to link the panchayat system with the forest concessions, the people were not willing to form panchayats.

10. Again, in 1932, the Government in their order G.O.No. 359 Ms, Development Department, dated 10-3-1932, directed that with a view to encouraging the formation of more panchayats under the Forest Village System in this district, the concession of refund of a portion of the grazing fee collected in return for satisfactory protection, should be continued and the panchayat should undertake the clearance and maintenance of boundary lines and as regards the rent payable to Government by the Panchayats it was ordered that the same should be fixed after deducting the cost of maintenance and clearance of boundary lines. As directed by Government, attempts were made to form more panchayats but the people were not willing to form panchayats on the conditions mentioned in the Government Order, because of the reasons that the Forest Department are catering them with all the requirements of the villagers such as supply of leaf manure etc. under the "Concessions" granted. A copy of this office report Ref.No.790/F.37-C1 dated 22-9-1932 submitted in the matter is enclosed. The Chief Conservator in his Proceedings Mis.No.40, dated 6-2-33, communicated with Conservator's D.Dis.No.716/32, dated 16-2-33, ordered that the matter might be dropped as the people

as the people were unwilling to take up the responsibilities of panchayat management.

11. Question (d). As the condition under which the concessions were granted, were broken by the villagers in the reserves Nos. 1 to 10 noted in the margin* they were withdrawn after giving due warning to the villagers. The reserves of Todar, Hosabettu, Nire, Vorwadi, Mavinaguli and Kasanakatte have also been closed to the concessions as per prescriptions in the Working Plan.

In all these reserves closed to the concessions the Government have recently allowed the concessions noted below:-

*1. Harkur
2. Talaburane
3. Jarvathukadu
4. Mavinakodlu
5. Herur
6. Chittur
7. Mudaregudde
8. Guruvankote
9. Kamigadde
10. Kursegudde.

"Free removal of dry leaves and pieces of dead firewood without any girth limit provided the wood is fallen and not cut on condition that no cutting of firewood will be permitted even though the trees are dead and that timber and valuable wood like teak sandal or rosewood will not be allowed to be taken away even if fallen".

12. Question (e). There are no neighbouring forests to Todar and Hosabettu Reserves. Todar and Hosabettu reserves were reserved from 15-12-1890 and 1-9-1888 respectively. They were not classified at the time of reservation; but now they belong to class I "Provincial Remunerative". Both the forests belonged to the closed Working Circle according to Mr.Foulke's Working Plan of 1902-

13. Question (f). Todar and Hosabettu reserves are now maintained as "Provincial Remunerative Forests", i.e. valuable sandalwood forests.

Copy to the Conservator of Forests, Ootacamund Circle, Ootacamund direct. I had no time to consult District Forest Officer, Mangalore South as he is on tour.

Copy to District Forest Officer, Mangalore South.

/True copy/

/By Order/ G.Seshagiri Rao,
Head Clerk.

18.

Removal of green leaves, etc., from reserved forests of South Kanara.

*91 *Q.*—MR. J. A. SALDANHA: With reference to the answer given on 31st August 1937 to my starred question No. 16, will the Hon. the Minister for Agriculture and Rural Development be pleased to state—

(*a*) if Government have enquired into the question as to whether the removal of green leaves and twigs of trees and shrubs from reserved forests in South Kanara was an ancient right or privilege of the cultivators in the neighbourhood of such forests?

(*b*) if so, what the decision of the Government is;

(*c*) with reference to the debates in the Madras Legislative Council on 19th March 1924 (L.C.P. Vol. XVII, pages 730 et seq) and the speech by Mr. Tireman, the then Chief Conservator of Forests, during the debate, what the decision of Government was as to the linking of the panchayat system with the privilege in question and on what condition the privilege of taking green leaves, etc., was granted then;

(*d*) whether that condition has been broken;

(*e*) for what kind of produce—for fuel timber or valuable industrial trees like sandalwood—were the forests of Hosabettee and Todar and other neighbouring forests originally reserved; and

(*f*) for what purposes are they reserved and maintained at present?

THE HON. MR. V. I. MUNISWAMI PILLAI:—"(*a*) & (*b*) Yes. It is not an ancient right or privilege.

"(*c*) & (*d*) The question is not understood. If it refers to the privileges of removing green manure leaves, dry leaves and dead wood, these concessions were granted from 1922 subject to the condition that the concessions would be withdrawn if abused or if the forests in which they were granted were burnt. In spite of the repeated warnings these concessions were greatly abused and consequently they were ordered to be withdrawn after due notice. However in response to several representations made, the Government have again ordered that the concession to remove dry leaf and dry wood should be restored subject to certain conditions. The above concessions have nothing to do with Panchayats.

"In 1922–23 some Forest Village System Panchayats were constituted under which 50 per cent of the grazing revenue were refunded to the Panchayat provided the forests were protected against fire and theft. Owing to abuse of the concession, wholesale illicit fellings and the disinclination on the part of the panchayatdars to renew the annual agreements, most of the village panchayats have ceased to function. There was only one panchayat working during 1936–37.

"(*e*) & (*f*) The Government are awaiting information called for from the Chief Conservator of Forests."

MR. J. A. SALDANHA:—"May I enquire whether the Hon. Minister has read the Indian Law Reports Volume and whether after reading it, he has arrived at the conclusion that the privilege of taking green manure leaves was not existing in the country before 1922? Was not that system prevailing at the time when the ruling was given by the Madras High Court?"

THE HON. MR. V. I. MUNISWAMI PILLAI:—"As I have already stated, it is not an ancient right or privilege."

MR. J. A. SALDANHA:—"May I know if the Hon. Minister arrived at that conclusion, after reading the High Court ruling?"

THE HON. MR. V. I. MUNISWAMI PILLAI:—"After reading it, we have come to this conclusion."

For Dept

Letter no 725 I) 38-29 7.6.38.

To,

Mr T. A. Saldana. M.L.A.

Mangalore.

Subject: Forests - grievances - L.C. question - South Kanara - Removal of green leaves & twigs - privilege -

Sir,

I am directed to invite attention to a supplementary question asked by you (copy enclosed) regarding the privilege of taking green manure leaves etc from the forests in South Kanara in which you refer to a ruling in the Indian Law Report. I am to request you to kindly state what the ruling is and in which Law Report it has been reported.

Copies with enc: Dir 7/6

31/7/6

Desp Cls. 7.6.38.

Secn A' for 18 CF

Dir 6/8/38

RL 26/8 Observe

D. 2481-I
20-6-38 W

From

Jerome A. Saldanha
Retired Jt. Dt. Judge and Additional Sessions Judge, Advocate
M. L. C.

Mangalore,
Balmatta, Kankanady P. O.
S. Kanara.

REGISTRAR-GENERAL'S OFFICE
19 JUN 1938
RECEIVED

Lr. dt. 18/6/1938
from Reps of
Collector in
S. Kanara

To

The Secretary to Government of Madras
Development Department
Fort St. George Madras

(Typed copy put
with typed papers)

Sir,

I invite a your letter no 725 D/38-2
dt 7th June 1938 on the subject of the alleg
encroachments of cultivation in S. Kana
& the removal of green leaves and twigs
from the adjacent shola forests, I have the honour
I L.R 28 Madras 257 as the judgment
relied upon by me in Question no 91
dt 25 March 1938 and to invite
your attention especially to the
observations of the learned judges of the
High Court on pages 278/280, 284/285 of the report
260, 264, 279 upon which Collector was
acted upon

and Secretary of the Rw. Board, under
which shall not be eligible to Skaaric
but there enjoy [illegible] from time to time
in respect of the [illegible] grants
right, title and interest, yet on the
above of easement under or license
for removal of green leaves and
branches from trees (& other shrubs
trees required for timber), and grass for
their cattle, and fructuary [illegible]
from new trees (underwood) for
domestic purposes. I may
observe that it is which would
appear also made in his speech on 19.3
by Mr Jinnah - the then Chief Commissioner
of Forest in the proceedings of the Legislative Council (p. 730 volume XLII
I enclose my printed memo published
on the Kharian Settlement - 2/6/1933
for closed area of reserved forests
You also a Summary
of the Report finally
Yours sincerely
James [illegible]

Supplement to the *Konkni Dirven*, 2nd June 1933

EDITOR: ALEX A. PAIS, B. A., LL. B.

Forest Grievances

Todar and Hosabettu Reserves

(1) These reserves (IV class forests) isolated and interlaced with cultivated areas in Hospet Parish were created in 1888-1890 extending over 468 and 401 acres for fuel purposes.

(Legislative Council Proceedings II 1921 page 522; XXXV 1927 p. 707, p. 774).

(2) The privileges conceded were—(*a*) Removal of *green manure* leaves of unclassified trees as well as dry leaves. (*b*) Collection and removal of dead trees 3 inches in diameter. (*c*) Clearing undergrowth to a distance of ½ mile from the limits of private holding. (*d*) The removal of poles 5 feet in height for betel leaf plantation. (*e*) Cutting of trees within a furlong from a house for sanitary purposes.

These privileges, old as they are, were firmly established as a result of persistent agitation in and outside the Legislative Council from 1921 to 1930. Concessions (*a*) (*b*) (*c*) and (*d*) are withdrawn and the panchayats dissolved with effect from 1st April 1933 in respect to the two reserves specified and several other reserves in S. Kanara on the ground that the concessions have been abused.

(3) The responsibility of the proper carrying out of the concessions was thrown on panchayats, with the aid of or rather subject to the control of one single forest guard, low-paid, with all the possible temptation for corruption in defeating the objects for which the panchayats were created.

Forest village panchayat system has admittedly never been popular and has been objected to by the villagers of Todar and Hosabettu in their petitions to Government in 1926 and 1928, and my notes submitted in 1928 and 1929. They demanded and demand still the reversion of the reserves and their being handed over to the Revenue Department for being managed by panchayats under the supervision of the Panchayat Officer.

(4) Great deal of confusion has been caused by linking the panchayat system with ancient privileges of villagers to remove green manure leaf as well as dry leaf and such ordinary auxiliary concessions, which had been existing from time immemorial before the forests were reserved, as may be judged from the reports of Collectors and the proceedings of the Revenue Board—some of which are quoted in Bombay and Madras High Court cases. (see specially *Secretary of State vs. M. Krishnaya*—I. L. R. 28 Mad. 257 at pp. 260, 264, 279, 280, 205.) This linking was objected by the villagers in their petitions and my notes to Government and the mistake was admitted by Mr. Tireman, Chief Conservator, in his speech on 19—3—'24 (L. C. P. XVII p. 730), when he said "As regards the manure leaf, both green and dry leaves, I gave orders some time ago that they should be given to the people free. The orders were misunderstood in some way and I am now enquiring why this was not done. As a matter of fact, I think the matter was mixed up with the question of forming village panchayats. In any case I am now giving orders that these leaves—green and dry—are to be given to the people free, as long as the people refrain from setting fire to the forests."

(5) These ancient rights were survivals of the attempt of Government "to gradually extinguish proprietary rights" of ryots in forests adjoining their wargs pathetically pointed out in the District Judge's judgment quoted on p. 260 Ibid) and deserve to be maintained whatever fate the panchayats deserve to meet.

(6) They were practically enforced by the villages though by frequent and numerous breaches of restrictions and formally revived as necessary concessions but linking them with the forest village system only in some villages including Todar and Hosabettu. That system has been reported to have worked satisfactorily in the North Mangalore Division (see Forest Administration Report

for 1930-31, Vol. I para 113). The Forest Department has been making serious efforts to extend the system but without success, because people are sure of their forest concessions without the burden of forest panchayats (Ibid). It is incredible that there have occurred serious and extensive abuses since 1932 to demand the suppression of the village system and with that the withdrawal of all forest concessions that had been existing irrespective of that system.

(7) The woes of our cultivators as a result of the reserved forests may be described in the pathetic words of a respectable long-standing resident at Hospet who has studied their conditions carefully:

"The two Reserves, Todar and Hosabettu, are the cause of great hardships to the cultivators on account of the loss of cattle, malaria, want of green leaves for the fields etc. It is heart-rending to hear how they lose their cattle sometimes at the time of cultivation. The Bengal tigers kill also buffaloes—either they have to get another or leave the cultivation. They are compelled to mortgage every possession of theirs to get another pair. In this locality, bananas and other vegetables, sweet potatoes etc., cannot be cultivated on account of the wild boars etc. Only selfish motives can make the Forest Subordinates heartless to the misery of the poor people on account of the Reserves and the Government merciless for the sake of revenue by sucking the blood of the poor people."

This confirms only the eloquent appeals in Mr. A. B. Shetty's speech in the Council on 14—3—1933 as well as in speeches made by former M. L. C's. of S. Kanara in the Council, which stand on strong contrast to the speech of Mr. M. S. Sreshta, lukewarm, as it is, while giving away the whole case. (See Proceedings printed below.)

The misery of the people will only increase tenfold by turning the reserves into *preserves of sandalwood versus ancient preserves of agriculture and horticulture.*

(8) The immemorial privileges to green manure leaf etc., adjoining forests as far as netti-kattu (ridge) has always been distinguished from the privilege of use of the *Kumaki* land (100 yards) an *exclusive* privilege and has been enjoyed and is entitled to be enjoyed irrespective and in addition to that of the Kumaki land—as in common by the village people and as a necessary concession (see the High Court Judgment cited above) To deprive the villagers of the former because of the existence of the latter would be very unfair and disastrous to them.

Mangalore,
10—5—1933.

JEROME A. SALDANHA,
EX-M. L. C.

Forest Grievances of S. Kanara

Proceedings of the Legislative Council of the Governor of Madras, Tuesday, the 14th March 1933—Budget Debate—Demand IV—Forests—Reserved.

The hon. Diwan Bahadur Sir M. Krishnan Nayar:—"Sir, on the recommendation of His Excellency the Governor, I move—

'that the Government be granted a sum not exceeding Rs. 32,32,300 under Demand IV—Forests—Reserved."

Mr. V. T. Arasu:—"Mr. President, Sir I rise to move the motion standing in my name, viz:—

'that the allotment of Rs. 28,400 for Forest—General Direction—Reserved—Pay of Establishments, be reduced by Rs. 100.'

* * *

Mr. M. S. Sreshta:—

* * *

"Now I come to a grievance of the South Kanara district. I believe other districts also share this grievance. While we are attempting to tide over these evil days, it is unfortunate that the Chief Conservator of Forests should have passed an order on 17th December 1932 withdrawing all the concessions now enjoyed by cultivators in reserved forests. I think this is hardly the time for the withdrawal of these concessions. It may be that these will have to be withdrawn some time or other, but to do so now is quite wrong. The order I hope will be reconsidered and withdrawn, to bring it into effect, if necessary, later on when times change."

Mr. A. B. Shetty:—

* * *

My hon. Friend, Mr. Sreshta, has drawn attention to a circular of the Chief Conservator in which he proposes to withdraw the concessions

24

1904--05

The Secretary of State Vs. V. Krishnaya

I. L. R. 28 Madras 257.

Summary

In ~~dismissing~~ the judgment of the High Court in this case from South Canara it was held that there is a general presumption that forest and immemorial waste land in South Canara ~~not exclusively occupied by any person or body of persons~~ is the property of the Government.

This presumption cannot be rebutted by kumki and Netticut privileges which are conceded to all warradars (occupancy tenants - Ryots) for the better enjoyment of their warglands adjacent to Government forest.

Netticut privileges are enjoyed by such warradars as have their wards situated in valleys between slopes of ridges. Each ridge or netticut forms a natural boundary within which a cultivator grazes his cattle and exercises his privileges to remove leaves and twigs for manure, the cutting of fuel for domestic use and the cutting of less valuable trees for the building of their own houses and for furniture (p.277).

Kumki (= inaid) land is a strip of 100 yards allowed out of reserve forest to ryots to afford them the means for procuring leaves for manure and to furnish fodder for their cattle. On ~~such~~ kumki land a ryot can plant trees for such manure purposes. It can be ploughed for the exclusive use of a ryot (p.279). It was an exclusive privilege conceded since about 1823 and was attached to the adjacent warg land.

Beyond this 100 yards limit the cultivators, i.e. all the warradars of each valley have been allowed the common usufruct of the open hill sides up to the water shed (~~Board~~ Board of Rev. Board 30-1-1865) quoted in page 281. But as pointed out by Mr. Flanagan in 1865 the usufruct did not go far enough to amount to proprietory right to the forest or waste land, but

it was a modified right, what Mr. Stunack calls an easementary but what is really a license or privilege viz., to make use of the leaves and other produce of the land as an aid to the cultivation of the wasteland and domestic purposes subject to the full proprietory right of Government (see para 280).

James A Sweetman
M L C
15/6/61

Copy of letter dated 18th June 1938 from Jerome A.Saldanha, M.L.C. to the Secretary to the Government of Madras, Development Department, Fort St. George, Madras.

Subject:- Forest rights of cultivators in South Kanara.

In reply to your letter No.728 I/38-2 dated 7th June 1938 on the subject of the alleged ancient rights of cultivators in South Kanara to the removal of green leaves and twigs etc. from the adjacent Govt. reserve forests, I have the honour to refer you to I.L.R. 28 Madras 257 as the judgment relied upon by me in Question No.91 dated 25th March 1938 and to invite your attention especially to the observations of the learned judges of the High Court on pages 260, 264, 279, 280, 281 and 285 of the report relying upon reports of Collectors and Proceedings of the Revenue Board and which show that the ryots in South Kanara had been enjoying from time immemorial in respect of the adjoining Govt. forests rights, though not proprietory, yet in the shape of easement privilege or licence for removal from the forests of green leaves and brush wood from trees (except specified trees required for timber) and grass for their cattle and for cutting and removing from them trees (unspecified) for domestic purposes. I may venture to assure that it is to this privilege reference was made in his speech on 19-3-24 by Mr. Tireman - the then Chief Conservator of Forests - in the proceedings of the Madras Legislative Council (page 730 Volume XLII). I enclose my printed memo. published in the Konkni Dirven Supplement - 2-6-1933 - for elucidation of my point of view and also a summary of the High Court Judgment.

Dw. 928 !
18.2.38 ?

Legis. Council No. 3—206--23 3.37.

SECRETARIAT OF THE MADRAS LEGISLATURE,

Fort St. George, dated the 17th Feb 1938.

18 FEB 1938

QUESTION No. 125 for the meeting of the Legislative Council to be held on the 1st March 1938

Two copies of this question are forwarded to the Dw. Department.

The question has been admitted.

Dw.
17/2/38

17/2/38

To

The Dw Department.

Draft.

Leg. Council Question
Starred.

Please see the Leg. Council Question in the cf. It does not seem to transgress any of the rules under section 54 of the Govt of India Act, 1935, Nor is the consent of H.E. necessary for asking this question.

clauses (a) & (b) of the question.—

In reply to a supplementary question by Mr. Saldanha whether in South Kanara the removal of green leaves for manure and of twigs of trees and shrubs from the forests was not an ancient right of the inhabitants the H.M. promised an enquiry — vide p.9 of lodged paper No. 2674 I/37 Dt 6.12.37. The working plan of South Kanara forests shows that some of these were enjoyed long before the definite grant of certain concessions was announced. The position in South Kanara is rather different. Owing to the existence of 'kumaki' lands on which the cultivators implied right seems to have been tacitly admitted to the use of the adjoining forests for the procuring of manure leaves, brushwood, small timber, grazing fodder, thatch grass etc, the rights of the people of South Kanara with regard to the forests were from the beginning treated "with almost ~~exceptional~~ unique deference". In course of time with the clearer enunciation of laws of forestry and a more defined and strict enforcement of the rights of the State, some of the usages and the enjoyments became curtailed. The C.C.F. has reported that the removal of

green leaves and twigs of trees and shrubs from the forests of South Kanara is not an old and ancient right and the 'B' registers of claims for several reserves in South Kanara show that no such right was admitted at forest Settlement.

A

clauses (e) to (f)

The c.c.f. may be asked to furnish the information asked for in these clauses. A draft o/m. is submitted for approval.

lis 23.2.38

RR 27/2/38

Sd 1.3.38

Sd 26.2.38

Issued as o/m. No. 728 I/38 dt. 1-3-38.

The c.c. has not yet furnished the information called for regarding clauses (e) to (f) of the question. The Council office has included this question in the agenda of the 25th instant.

A draft answer giving the information mentioned at 'A' above ~~on page 2 ante~~ for clauses (a) & (b) of the question is submitted for approval. The answer to clauses (e) to (f) may be "The Govt. have called for the information"—

lis 23.3.38

RR 23/3/38

Draft answer submitted for approval.

Sd 23.3.38

Sd 23.3.38

HM/A & RS

Sd 23.3.38

Issue

Sd 24/3/38

pp 9-17 cf

From the C.C.-F. No. 2075/38-C.2 dt 15-5-38

Please see clauses (c) to (f) of the question on pp. 1-2 cf. and the information furnished by the Chief Conservator on pp. 9-11 cf. clauses (c) & (d) have already been answered with the papers available — vide pp. 5-6 cf. The information now furnished by the C.C. may be utilised in future when there are questions on the subject.

The printed proceedings of the Council relating to this question may be awaited.

Lio 26.5.38

RL 27/5/38.

SRL 26/5/38.

To, AS.

Please see printed proceedings of the Legislative Council at Page 18 C.f. No action seems necessary. The papers may be lodged.

LeS. 30.5.38.

Is it possible to find out what the Nothing is that was referred to by Mr Saldanha.?

SRL 30/5/38.

RL 31/5/38

To A.S.

The quinquennial decadal

5 21

and other law publications have been received. The ruling referred to by the Hon. Member is not traceable. Perhaps he may be asked to refer to the ruling. Subject to orders, a draft letter is submitted for approval.

6638

7638

Issued as Letter No. 728 I/38-2 dt 7.6.38 p19-F

b 32

H 20-21 Cf [Letter from Mr. Saldanha dated 18-6-38]

To A.S.

Please see the letter to Mr. J. A. Saldanha and his reply at H 19-21 Cf. Mr Saldanha has endeavoured to bring to the notice of Govt that the rights in South Kanara have been enjoying certain concessions from very ancient times and that the Forest dept have withdrawn some of them. He cites a judgment of the Madras High Court as lending support to his contention that the removal of green leaves and twigs of trees etc from reserved forests was an ancient right. The judgment of the High Court will be found reported on p 257 et seq of the Indian Law Reports (Madras). A summary of the judgment is found at H 24-25 Cf. The points at issue in the High Court judgment though they are not directly connected with the questions under reference, the High Court

Rem)

have examined the entire land tenure system obtaining in South Kanara at the time (1904) and incidentally quoted extensively from the previous records about the privileges enjoyed by the warg dars (ryots) such as Nattikut, Kumki and other privileges. These privileges are described on pp 277, 279, 280-81 of the Judgement. In addition to the Kumki privileges which is recognised by the Govt. the cultivators of each village have been allowed the Common usufruct of the open hill sides up to the water shed - viz to make use of the leaves and other produce of the land as an aid to the cultivation of the warglands and domestic purposes subject to the full proprietory right of Govt. In all the previous discussions relating to these concessions in South Kanara it does not appear that any notice was taken of the Judgement of the High Court to which we

Remand

Saldanha has now drawn the attention of the Court. It was all along been held that the concessions granted by the C.C.P. in 1922 was only a concession which was subject to certain restrictions and when the concessions were abused, they were withdrawn. This position seems to ~~appear~~ be altogether not correct.

2. The is however point for consideration. Even though it is seen from the High court judgment that the privileges refused to were ancient privileges enjoyed for more than 60 years (1865) the real position seems to be different. After the coming into force of the Madras Forest Act 1882, the several forests were taken up for reservation. Sections 4 to 16 of the Forest Act prescribes the procedure to be followed whenever it is proposed to constitute

H 2-7 of the Forest Act

any land a reserved forest.
Under Section 4 of the Act, a notification
shall be issued
(a) specifying the situation and
limits of such land;
(b) declaring that it is proposed
to constitute such land a
reserved forest;
(c) appointing an officer to enquire
into and determine the existence,
nature and extent of any rights
claimed, or alleged to exist, in
favour of, any person in ~~of~~ over
any land comprised within such
limits and to deal with the same
as provided in the Act. Under
Section 6 of the Act the Forest Settlement
officer shall publish a notification
~~Containing~~ specifying among other things
a period within which every
person claiming any right over
the land shall present a petition
or appear in person and state
the nature of such right etc. The
Settlement officer will enquire
into such rights and either admit
or reject them. ~~Rights of~~
~~persons whose rights are claimed~~

When all the formalities specified in sections 4 to 15 of the Act have been gone through, the Govt will publish a notification under section 16 of the Act declaring the land as reserved forest. Rights in respect of which no claim has been preferred under section 6 of the Act shall thereupon be extinguished. Hence coming to the reserved forests in question it is not material when they were declared as reserved forests. The point is that there were certain old privileges. When action was taken by the Forest Dept to constitute these forests as reserved forests, the mayor of South Kanara should have claimed these rights in the forests in question and got them admitted. There is no information whether any claims were made but the C.C.F has reported

Section 17 of the Forest Act

that none has been admitted. p11 q16)
It is therefore clear that no
privileges in these treaties
have been recognised and
hence whatever privileges
were enjoyed before the
date of reservation, have
become extinguished. The
rysts cannot have any legal
claim for such rights.

3. Notwithstanding the legal
position, the CCT, as a matter
of fact, has issued orders — (A)
in 1922 sanctioning these Govt. 963 dtd 15.7.88
privileges subject to certain
restrictions. The concessions
were abused and hence they
were withdrawn. Subsequently
the Govt have permitted the
free removal of dry leaves — do —
and dry fuel from 1936. Recently
the CCT has recommended Letter p.1.
some more concessions
and these have been approved.

4. The point now for consideration
is whether, apart from the legal
aspect of the question, it is
necessary to restate the position

with reference to the High
Court Judgment to which
Mr Saldanha has drawn
attention. It seems just
and proper to recognise
the universal privilege
enjoyed by all Tea cultivators
in South Kanara from a fairly
long time though these privileges
have been legally extinguished.
The Forest Act, though it makes
mention of particular rights
of particular individuals,
it cannot be the intention
that a ~~grant~~ concession
or privilege prevailing
throughout the District as
seems to be the case here,
can be so lightly taken
away. If it is considered
necessary to pursue the
examination of the question,
perhaps the Legal Dept may
be consulted before making
a reference to the C.C.
For orders.

I don't think either the Judgments
+15738 relied on by Mr Saldanha or his own

asseverations made from time to time in the Council and in the Courts after the passing of the Act in regard to the reserved forests in S Kanara.

The judgment in I.L.R. XXVIII Madras is contained at pages 287-301 in the Volume 1905 part up with the file. The decision in that case was in regard to the ownership or proprietorship or property rights in forest and waste lands and the finding was the large tracts of immemorial growth are good forests unless proof of private ownership in regard to any particular part of the forest was forthcoming. Removed

The pages of the I.L.R. referred to by Mr Aldam as containing the observations of the learned judge of the High Court are 260, 264, 279, 280, 281 & 285. All these do not contain the High Court's observations — for instance — pages 260, 264, 279. At p. 280, reference is made to what the Blame in 1848 admitted what he called a limited right — an easement — a license or privilege viz to cut the wood of the lessee and other produce of the land as an aid to the cultivation of the waste lands and for domestic purposes subject to the proprietary rights of the Govt. Description of forest with Kumaki privileges are then explained (p. 281) p. 26 of

"The question is whether the privileges referred to as existing in the forests are such as to debar Govt at this date from preventing

the people from exercising them. These privileges are very restricted in scope. The Govt have not favoured the exercise of Kumaki privileges. They are recognized even today up to 100 yards round the village land. The question is about the exercise of common privileges by the community in general beyond the limits within what is called "metrical" limits. These are to be deemed as enjoyed by licence of Govt and these privileges do not operate to create any proprietary rights in the licensee"

Attention is also invited to the Section in the Working Plans of the two Manjakudi Division dealing with the legal position of the Forest in the District. (Section 8 of S. Manjakudi Report & 8 of N. Manjakudi Report)

With the passing of the Forest Act, 1882 and the consequent conversion of forest-settlement, in both of the land in the Dt was deemed the property of the State subject only to admitted rights of way and water and certain rights to pasture and forest produce, over pasture and private holdings.

Excepting the Kumaki rights, the other privileges or concession can be given only if their exercise was not detrimental to the preservation of forests. It was consistently with this right that Subsequent to Settlement the Govt granted concessions in various parts of the forest and withdrew them when they were abused. There is nothing illegal in the present position and no further action is called for

CCA/28/34

HH(A&RS). 28.7.34 — RR 28-7-34

CCA 27.7.34

41

The papers may be

Govt No. 1855 dt 30.7.38

Recorded

14/3097

L.C.B. – South Kanara – Forest Concessions – ancient rights – papers recorded.